

FILED

Motion: for Court Order (1st 4th 13th)

2008 AUG 13 PM 3:19

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Logment: Memorandum NO. 307-CV-02183
IV.

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1 of 4

COPY

JAMES H CUNNINGHAM
AVENAL STATE PRISON
P.O.# BOX 8
AVENAL, CA 93204

UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF CALIFORNIA

JAMES H. CUNNINGHAM (petition)

v.

matthew cate, Secretary respondent

MOTION: COURT ORDER REMAINING

FIRST FREE POSSESSION

OF COURT TRANSCRIPTS

JURY VOIR DIRE

COURT ORDER CORRECTIONS

UNDER PENAL CODE 1258

CASE NO. 307 cv 02183

TO THE HONORABLE MAGISTRATE JUDGE RUBEN B. BROOKS:

INTRODUCTION

IN RE: JURY VOIR DIRE: PETITIONER IS MOTIVATED WITH STRONG MEANS PERTAINING TO HIS GUARANTEE OF A FULL WRIT OF HABEAS CORPUS.

And with the assistance of the Honorable Courts, Petitioner can stay astray from procedure default. Petitioner has sought out on several occasions to obtain his free by law and right Jury voir dire (due process). Petitioner's claim of racial profiling is enclosed. If the full transcripts would have been afforded and prepared, the back and forth would never be partaken year to date.

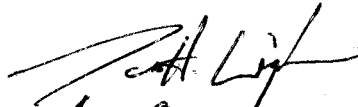
The jury voir dire holds the needed application of the law. And should have been asserted with the following records. Wherein the voir dire is critical to petitioners Constitutional Rights at trial. Petitioner's reciprocal discovery is constitutionally compelled with purpose. The required jury voir dire evidence is favorable to the accused as constitutionally mandated discovery. Missing records and settlement statements are part of Petitioner's work product. Appellate Attorney Ms. Susan Kesler documents a jury voir dire does not exist have or have any existence. That documentation gives right to transcript on appeal. An indigent defendant has the right to a free transcript or an adequate substitute on appeal (under federal law).

ROBERT V. Lavellee (1967) 389 US 40, 19 L ed 2d 41 88 s ct 194 (felony appeals).
Petitioner shifts the burden to Superior Court to show that the alternative is adequate. Mayer v. City of Chicago (1971) 404 US 189, 195, 30 L ed 372, 379 92 ct 410 415. Petitioner moves the court towards adjudication so to exercise under California law. That both indigent and nonindigent defendants in felony cases have a right to record of sufficient completeness for proper review furnish at state expense. In re; Armstrong (1981) Ca 3d 565, 570, 178 cr 902, 205. An application to prepare a settlement statement should state why there are no transcripts and explain how the material requested may be used on appeal. Cal Rules of Ct 4(e) 7 36(b); People v. Castro (1982) 138 Ca 3d 30, 187 Cr 658. Petitioner repeats if the application is made in the appellate court, remand the matter to the trial court to determine whether a settlement statement can be obtained. People v. Gzikowski (1932 C 3d 580, 584 N2, 186 Cr 339, N2. An evidentiary hearing) is often necessary in the trial court. See People v. Gzikowski supra. Petitioner in retrospect questions about whether a proceeding was reported, Counsel should make a motion in the appellate court to argue the record. Petitioner's due process was violated among the Fourteenth Amendment if the proceeding was not reported. Counsel should request the reporter or clerk should file a declaration with the court of appeal indicating that there is no transcript. See in Cal Rules of court 36(b) In Pro per: Petitioner's duty is to point out appellate counsel for not filing a full investigation to why appellate counsel is faced with an incompleteness of records. Appellate Counsel should attempt to obtain a settlement statement of the missing portion. See in Cal Rules of Ct. 4(e), 7, 36; PEOPLE V. MOORE (1988) 201 Ca.3d, 51, 248 Cr 31. Loss of all or a material portion of records. The loss. The loss of Petitioner's material portion of the records, or the absence of a record through no fault of the defendant may constitute a denial of meaningful appellate review; requiring reversal. To prevail on such a claim the defendant must show that the missing record was important to an issue the defense intended to raise on appeal and that an adequate substitute for record cannot be obtained. # 1 Claim is that there were several jurors out of petitioners (blood group) Pitted for selection and that everyone of the male (BLOOD GROUP) was dismissed. An trial Judge dismiss

1 Counsel motion for a mistrial with any bases. So all of the above is
2 reviewable. Since petitioner unavailability of a reporters transcript
3 of a transcript of a material portion of the trial can also be grounds
4 for a new trial PENAL CODE 1181(9). defendant has the right to a new
5 trial if all sudstantrial parts of the reporters transcript notes of
6 the trial haven been lost or destroyed. PENAL CODE 1181(9).
7 New trial motions are made in trial court and are discussed in 34,3,34
8 15,. ROSE V. CLARK(1986) 478 US 570,92 L ed.460,106 S Ct3101.
9 Therefore without any more speculation by Superior Court Petitioner
10 encourages the repress type tatics to be diffused The outcome of
11 the evidence should favor appellant. ORDER GRANTED;

12
13 DECLARANTS

14 I, James H. Cunningham declare the above is
15 true to my knowlege and believe. An that the
16 order should be served base on fact.

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19 Sign;  _____
20 Date: Aug 8, 2008 _____
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	cases	Authorities	pages
1	Penal Code# 1258	-	1
2	Public recors act		1
3	REquest Govt. C 6250-6265		1
4	Trombetta & Youngblood		1
5	Brady dicoverly		1
6	Penal code 1054-1054.8		1
7	People v. Wright		1
8	Sassounian (1995		2
9	U.S. v Bagel Supra		2
10	Kyles v. Whitley		2
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PROOF OF SERVICE BY MAIL

ORIGINAL

I THE UNDERSIGNED, CERTIFY THAT I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE. THAT I CAUSED TO BE SERVED A COPY OF THE FOLLOWING DOCUMENT:

ENTITLED: United States District Court Southern District of California
Court order First Free Possession of Court transcripts Jury Voir dire
Court order Corrections UNDER Penalcode 1258 CASE NO. 307-cv-02183)

BY PLACING THE SAME IN AN ENVELOPE, SEALING IT BEFORE A CORRECTIONAL OFFICER, AND DEPOSITING IT IN THE [UNITED STATE MAIL] AT AVENAL STATE PRISON AND ADDRESSED IT TO THE FOLLOWING:

EXECUTED ON Aug. 2, 2008 AT AVENAL STATE PRISON, AVENAL, CALIFORNIA

I, James H. Cunningham, DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAW OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

ORIGINAL

[Signature]
SIGNATURE OF DECLARANT

JAMES H. CUNNINGHAM
PRINT NAME OF DECLARANT

PRO PER.